

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY CRAYTON,
Plaintiff,

v.

G. RAMEY, et al.,
Defendants.

Case No. 18-01450 BLF (PR)

**ORDER OF DISMISSAL;
TERMINATING PENDING
MOTIONS AS MOOT**

(Docket No. 44)

Plaintiff, a California inmate, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison staff at Salinas Valley State Prison (“SVSP”). On May 15, 2019, Defendants filed a suggestion of Plaintiff’s death which was also served on Plaintiff’s known next of kin, *i.e.*, his sister, daughter, and wife. (Docket Nos. 48, 48-1, 48-2, 48-3, 48-4, 48-5.) The suggestion of death stated that under Federal Rule of Civil Procedure 25, Plaintiff’s successor or representative must move for substitution within ninety days of service of the statement, or the action may be dismissed. (Docket No. 48 at 2.)

“If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after the service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed.

1 R. Civ. P. 25(a); *Hilao v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996). Dismissal
2 is not mandatory, despite the use of the word “must” in Rule 25(a), and, where the action is
3 dismissed, dismissal need not be with prejudice. *Zanowick v. Baxter Healthcare*, 850 F.3d
4 1090, 1094 (9th Cir. 2017). “[E]ither a dismissal without prejudice or an extension of the
5 90-day deadline are discretionary options for the district court.” *Id.* at 1096.

6 Plaintiff’s wife, Ms. Geneva Williams, was served with the suggestion of death on
7 May 1, 2019. (Docket No. 48-3.) Plaintiff’s daughter, Ms. Tameka Crayton, was served
8 with the suggestion of death on May 8, 2019. (Docket No. 48-4.) Plaintiff’s sister, Ms.
9 Jessie Gasper, was served with the suggestion of death on May 9, 2019. (Docket No. 48-
10 5.) More than ninety days has passed since service of the suggestion of death on these
11 three individuals, and no motion for substitution has been filed. Accordingly, this action
12 must be dismissed. Fed. R. Civ. P. 25(a); *Hilao*, 103 F.3d at 766.


13
14 **CONCLUSION**

15 For the foregoing reasons, this action is **DISMISSED** without prejudice pursuant to
16 Rule 25(a) of the Federal Rules of Civil Procedure.

17 The Clerk shall terminate all pending motions as moot, including Docket No. 44.

18 **IT IS SO ORDERED.**

19 Dated: August 22, 2019


BETH LABSON FREEMAN
United States District Judge